Calendar No. 163

102D CONGRESS *1st Session* | SENATE | REPORT 102–110

FEDERAL EMPLOYEE REDUCTION-IN-FORCE NOTIFICATION ACT

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 1341

TO AMEND TITLE 5, UNITED STATES CODE, TO REQUIRE THAT A FEDERAL EMPLOYEE BE GIVEN AT LEAST 60 DAYS' WRITTEN NOTICE BEFORE BEING RELEASED DUE TO A REDUCTION IN FORCE

JULY 17 (legislative day, JULY 8), 1991.—Ordered to be printed

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Mr. GLENN, from the Committee on Governmental Affairs, submitted the following

REPORT

[To accompany H.R. 1341]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 1341) to amend title 5, United States Code, to require that a Federal employee be given at least 60 days' written notice before being released due to a reduction in force, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

CONTENTS

I. PURPOSE

The purpose of H.R. 1341 is to require that a Federal employee be given at least 60 days' written notice before being released due to a reduction in force (RIF). The bill also requires notification to the state dislocated worker unit and the chief elected official of the local government when a RIF of fifty or more employees occurs. The bill also grants authority to the President to shorten the notification period in situations not considered reasonably foreseeable.

II. Summary

The legislation requires that Federal employees who are going to be released due to a reduction-in-force (RIF) be given at least 60 days' written notice. The bill also gives the state dislocated worker unit and local government chief the same 60-day notification, when a RIF of fifty or more employees occurs.

The bill states that an employee may not be released due to a RIF unless the employee and the employees' collective bargaining representative (if any) are given 60 days' written notice. As provided for under current regulations for specific notice, the 60-day notice shall consist of the personnel action to be taken with respect to the employee involved, the effective date of the action, a description of the procedures applicable in identifying employees for release, the employee's ranking relative to other competing employees and how that ranking was determined, and a description of any appeal or other rights which may be available.

The notices to the state and government official shall consist of the number of employees due to be separated, when the separations will occur, and other information of assistance and services under the Job Training Partnership Act.

The President may, in writing, shorten the notification period of a particular RIF because of circumstances not reasonably foreseeable. Such circumstances are an immediate reduction in appropriations or a national emergency. The request to shorten the notification period shall be submitted to the President by the head of the agency involved and indicate the number of days by which the period should be shortened, and the reasons why the request is necessary. No notice period may be shortened to less than 30 days.

These notification requirements shall apply to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of the legislation.

III. Background

Since the early 1980's concerns have grown regarding Federal reduction-in-force (RIF) policy. In December, 1988, the Department of Defense (DOD) announced a proposal to close and realign a significant number of military installations and to downsize the DOD work force. The prospect of major reductions in civilian personnel at the Department of Defense, combined with ongoing concerns about RIFs at domestic agencies, has generated new policy concerns that Federal RIFs be fair and equitable.

Private Sector Notification Requirements

In 1988, Congress enacted legislation requiring advance notice of significant closings and layoffs in the private sector. This legislation, the Worker Adjustment and Retraining Notification Act (WARN), Public Law 100–379, generally requires 60 days' advance notice of plant closings and mass layoffs. Subsequently, it has been suggested that Federal employees and the communities in which they live should be provided advance notice of impending dislocations that is comparable to that provided to private sector workers pursuant to WARN.

The fact that an employee worked for the Federal government rather than the private sector does not alter the impact of job dislocation on the employee, the employee's family, or the community in which the employee lives.

Considerable research has been done on the issue of dislocation. The General Accounting Office (GAO) reviewed advance notification policy in its study entitled, "Plant Closings—Limited Advance Notice and Assistance Provided Dislocated Workers" (GAO 87–105). In this report, GAO concluded that advance notice:

(1) Provides time to plan and implement programs to help workers adjust to their dislocation and find re-employment;

(2) Increases worker participation in adjustment programs; and

(3) Improves the efficiency and effectiveness of adjustment programs by helping dislocated workers find comparable jobs more quickly.

Two other earlier studies also concurred with GAO's findings. In 1986, Secretary of Labor William Brock established a Task Force on Economic Adjustment and Worker Dislocation, which issued a report entitled "Economic Adjustment and Worker Dislocation in a Competitive Society" which concluded:

(1) Advance notice is an essential component of a successful adjustment program.

(2) Longer notification periods are preferable to shorter ones. Notice periods of two to three weeks have a negligible effect on reducing the duration of unemployment.

(3) There is no evidence that the productivity of the work force is adversely affected during a notification period.

In early 1986, the Congressional Office of Technology Assessment (OTA) analyzed the costs and benefits of advance notice. The study agreed with the GAO report in that assistance programs for dislocated workers should begin before dislocation because workers are easier to enroll, managers and workers are easier to enlist as active participants, and adjustment services for workers can be ready at the time of the layoff. The OTA concluded that a minimum of two to four months is needed to set up the adjustment services program. Like Secretary Brock's task force, the OTA saw no decline in productivity or worker unrest after a notification period.

The Joint Committee on Science, Engineering, and Public Policy of the National Academies of Science and Engineering found in their report, "Technology and Employment, Innovation and Growth in the U.S. Economy" that:

(1) The benefits of advance notice more than outweigh the costs;

(2) Advance notice of as little as one month reduces the duration of unemployment among displaced workers by as much as 27 percent; and

(3) Workers who are not given advance notice of plant closings and layoffs suffer economic losses of $4,500 to

$15,000 greater than dislocated workers who do receive notice.

Current Reduction-in-Force Regulations

Under current law, there is no statutorily-mandated RIF notification period for Federal employees.

At present, there are two types of notices by which agencies advise employees that a RIF is planned, a general notice and a specific notice. A general RIF notice simply alerts employees to the possibility of a RIF at their agency. A specific RIF notice advises an employee that he or she will be affected by a RIF action.

Under current regulations, agencies must provide a general RIF notice to employees 30 days in advance of the proposed action but need not specifically advise employees of separation or other action until 10 days before the separation or other action. The Administration has proposed new regulations that would require all agencies to provide 60 days' general notice, with as few as 10 days' specific notice.

Need for Advance Notification

With WARN, Congress recognized that in today's job market where specialized education and skills are often prerequisites for new employment, 30 days' notification was hardly sufficient time to prepare for a job search. In some respects, federal employees have a greater need for advance notice than do their private sector counterparts. As Mr. Robert Tobias, President of the National Treasury Employees Union, stated before the House Subcommittee on Human Resources the need for retraining is essential for federal workers because:

> The average federal worker is 42 years old with over 13 years experience in government. Federal workers, for the most part, are long removed from the job market and often have worked only in jobs that are unique to government service. The very factors that make these employees invaluable in their current government jobs—long experience and an intricate knowledge of a particular agency's operations—are the same factors that may preclude a rapid transition to new employment.

In addition to giving workers time to prepare and to search for a new job, the federal agency can also give itself the time to better manage the reduction-in-force (RIF) process. The agency can prepare for the layoffs with such tasks as bringing personnel records up to date and creating employee placement and counselling services. Also, 60 days' notice would give employees the opportunity to retire or to voluntarily separate from the agency, therefore reducing the impact of the RIF's. Finally, by extending the RIF notification time, agencies might be better able to assess its personnel needs before resorting to RIF's, thus avoiding the expenses of severance pay, administrative costs, unemployment insurance and training costs for replacement employees. When GAO examined the many RIF's of 1981, it found that 17 percent of the positions RIFed were refilled with new hires within a year.

If federal employees have a greater need for advance notice, the federal government also has a greater ability to accommodate that need. Private companies, responding to the rapidly changing economic needs, are limited in their ability to foresee events. Federal agencies, however, are typically aware of impending reduction-in-force actions well in advance of the date of employee release. Meeting a 60-day notice requirement will not require any additional delay in the agency's planned reduction. To the extent that an agency may need to respond quickly to events that were not reasonably foreseeable, H.R. 1341 authorizes the President to waive the 60-day notice requirement.

IV. Legislative History

H.R. 1341 was introduced on March 7, 1991 by Representative Paul E. Kanjorski. It was referred to the Subcommittee on Human Resources, where a hearing was held. The bill was then referred to the Committee on Post Office and Civil Service, marked-up and reported to the full House. H.R. 1341 was approved by the House on June 24, 1991 and sent to the Senate Committee on Governmental Affairs.

S. 1292, introduced by Senator John Glenn, was referred to the Senate Committee on Governmental Affairs. On June 27, 1991, the Committee held a markup and, by voice vote, ordered H.R. 1341 reported to the Senate, as amended by the text of S. 1292.

During consideration of S. 1292, the observation was made that OPM's proposed RIF regulations are currently in a 60-day comment period. The suggestion was made and accepted that it would be good if the Committee and the Administration could work together in an attempt to reach more of an agreement on this issue.

V. Agency Views

The Committee notes the opposition of the Office of Personnel Management (OPM) to H.R. 1341. According to OPM,

> (T)he Administration supports the goal of providing a longer notice period to Federal employees who are affected by a reduction in force. The Administration, however, opposes H.R. 1341 because it would establish in statute RIF notification procedures that should be prescribed administratively.

VI. Section-by-Section Analysis

SECTION 1. SHORT TITLE

Section 1 designates the Act as the "Federal Employee Reduction-in-Force Notification Act".

SECTION 2. NOTICE REQUIREMENTS

Section 2 of the bill amends section 3502 of title 5, United States Code, by adding new subsections (d) and (e).

Subsection (d)(1)(A) of section 3502 provides that an employee may not be released due to a reduction in force unless the employee and the employee's exclusive collective-bargaining representa-

tive (if the employee is so represented) are given written notice at least 60 days before the employee is so released.

Subsection (d)(1)(B) of section 3502 provides that if the reduction-in-force would involve fifty or more employees, the requirements of subsection (d)(3) must be met at least 60 days before any employee is released.

Subsection (d)(2) of section 3502 provides that the notice provided to employees under subsection (d)(1)(A) shall include (A) the personnel action to be taken with respect to the employee involved; (B) the effective date of the action; (C) a description of the procedures applicable in identifying employees for release; (D) the employee's ranking relative to other competing employees and how that ranking was determined; and, (E) a description of any appeal or other rights that may be available.

Subsection (d)(3) provides that the notice required under subsection (d)(1)(B) shall be given to (i) the appropriate State dislocated worker unit or units referred to in the Job Training Partnership Act; and (ii) the chief elected official of each unit of local government as may be appropriate.

Subsection (d)(3) further provides that such notice shall consist of written notification as to (i) the number of employees to be separated broken down by geographic area or on any other basis prescribed by regulation; (ii) when the separations will occur; and, (iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

Subsection (d)(4) requires the Office of Personnel Management to prescribe such regulations as may be necessary to carry out the provisions of subsection (d) of section 3502.

Subsection (e)(1) provides that, upon request, the President may, in writing, shorten the notice period required under subsection (d)(1) (A) and (B), if necessary because of circumstances not reasonably foreseeable. The Committee believes that such circumstances clearly would include a national emergency or an unforeseen reduction in annual appropriations.

Subsection (e)(2) provides that a request to shorten a notice period must be submitted to the President by the agency head involved and shall include the number of days by which the agency head requests that the period be shortened, and the reasons why the request is necessary.

Subsection (e)(3) provides that no notice period may be shortened to less than 30 days.

SECTION 3. APPLICABILITY

Section 3 provides that the amendment made by section 2 shall apply with respect to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act.

VII. Regulatory Impact of Legislation

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the

regulatory impact which would be incurred in carrying out the bill."

This enactment of this legislation would not have a significant regulatory impact.

VIII. Cost Estimate of Legislation

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office (CBO) has reviewed the cost implications of H.R. 1341. The following is CBO's estimate of the potential costs of this legislation:

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 9, 1991.

Hon. John Glenn,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 1341, the Federal Employee Reduction-in-Force Notification Act, as ordered reported by the Senate Committee on Governmental Affairs on June 27, 1991. CBO estimates that this bill would result in annual costs of less than $500,000 to the federal government for fiscal years 1991 through 1996 and would result in no costs to state and local governments. This bill would not affect direct spending or receipts, so there would be no pay-as-you-go scoring under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

H.R. 1341 would require that federal employees subject to release under a reduction-in-force action receive written notice at least 60 days before the scheduled date of release. In addition, the bill would require that written notice of scheduled releases be provided to the appropriate state dislocated worker units or the chief elected officials of such units or of appropriate units of local government. The bill would allow the President to shorten the required period of advance notice because of circumstances not reasonably foreseeable. The bill also would require the Office of Personnel Management (OPM) to promulgate necessary regulations.

CBO estimates that the requirements to draft regulations and implement other administrative reporting requirements would result in small administrative costs since the OPM intends to develop administrative requirements similar to those in H.R. 1341. OPM has already developed preliminary regulations that contain requirements similar to those set forth in the bill and thus would not need to devote substantial effort to promulgating regulations based on this bill. Also, CBO estimates that there would be few, if any, situations in which an employee would remain with the federal government beyond a scheduled release date in order to meet the 60-day notification requirement and thus receive additional federal payment for salary. Since federal agencies are usually aware of impending reduction-in-force actions well in advance of the actual dates of employee release, they would normally be able to meet the sixty day notification requirement without adjusting the release dates of employees. Thus, CBO believes such situations

would not result in significant costs to the federal government. Finally, CBO estimates that the bill would not affect the number of reduction-in-force actions in the federal government, since the requirements of the bill would not impose restrictions that would require agencies to alter significantly their current procedures.

On June 17, 1991, CBO prepared a cost estimate for H.R. 1341, as ordered reported by the House Committee on Post Office and Civil Service on June 12, 1991. The two versions of the bill are nearly identical, and CBO estimates that their cost would be the same.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Patricia Conroy, who can be reached at 226–2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

IX. CHANGES IN EXISTING LAW

Rule XXVI of the Standing Rules of the Senate requires that changes in existing law made by the bill, as reported, be detailed in the Committee Report accompanying the bill. Changes in existing law are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

§ 3502. Order of retention

(a) * * *

* * * * * * *

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of fifty or more employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee's ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to the Job Training Partnership Act.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1) (A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

○